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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/740,554	12/20/2000	Georg Domenig		4501

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EXAMINER

STRIMBU, GREGORY J

ART UNIT

PAPER NUMBER

3634

DATE MAILED: 01/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/740,554	DOMENIG ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Gregory J. Strimbu	3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2002.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 4-9 and 11-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4-9 and 11-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 December 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 15 October 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☒ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

***Oath/Declaration***

Applicant has not complied with the requirements of 37 CFR 1.63, since the oath, declaration or application data sheet does not acknowledge the parent application, serial no. 09/640,052, now abandoned. A new oath, declaration is required in the body of which the present application should be identified by application number and filing date. Additionally, the applicant is reminded of his duties under 37 CFR 1.63(d).

***Drawings***

The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on October 15, 2002 have been approved.

Figures 11-14, however, are objected to because they fail to comply with 37 CFR 1.84(p)(5) since the description in the specification does not coincide with the reference characters in figures 11-14. For example, reference characters 58, 62, 64 and 66 on page 11 do not appear in the drawings while reference characters 50, 52, 54 and 56 that appear in figure 13 do not appear in the specification.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Specification***

The abstract of the disclosure is objected to because "upp0er" on line 3 and "withy" on line 4 appear to be typographical errors. On line 13, "[t]he screw" is

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confusing since it is unclear if the applicant is referring to the threaded member set forth above or is attempting to set forth another element in addition to the threaded member above. On lines 15-17, "a one piece shelf . . . also included" is confusing since it is unclear what includes the one piece shelf construction. Correction is required. See MPEP § 608.01(b).

The disclosure is objected to because of the following informalities: the drawings fail to include a figure 3 as described on the last line of page 6; the specification fails to include a description of figure 3b; "Fig. 21" on line 6 of page 8 is confusing since there is no figure 21 in the disclosure; "pin 23" on line 9 of page 8 is confusing since it is unclear how the pin 23 alone can show the elevational view of the pin.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

Claims 4-9 and 11-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as "the location" on line 5 of claim 4 and "the connected shelves" on lines 5-6 of claim 4 render the claims indefinite because they lack antecedent basis. Recitations such as "the pin-receiving indent includes a post-encircling sleeve" on line 2 of claim 8 render the claims indefinite because it is unclear how an indent can include a sleeve. It would appear that the sleeve includes the indent rather than the converse. Recitations such as "apertures" on line 5 of claim 11 render

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the claims indefinite because it is unclear if the applicant is referring to the apertures set forth above or is attempting to set forth apertures in addition to the ones set forth above.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 4 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Funk. Funk discloses a rotary shelf assembly mechanism comprising a vertical post arrangement 1, first and second mounting brackets 3, 4 spaced apart from and opposing each other supporting the post arrangement, at least one single piece shelf 7 connected to the post arrangement, the post arrangement having pin receiving apertures 5 at the location of each of the at least one connected shelf, each of the at least one single piece shelves having an integral post securing section 8 including a hub 2 and a pin receiving indent (not numbered, but comprising the hole within which the pin 6 resides) within the hub, and a pin 6 extending through the post arrangement pin receiving apertures and cooperatively receiving and retained by the pin receiving indent of the at least one shelf to secure the at least one shelf to the post arrangement.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frankel in view of Funk. Frankel discloses a rotary shelf assembly mechanism comprising a vertical post arrangement 18 and 29, first and second mounting brackets 32 and 24 spaced apart from and opposing each other supporting the post arrangement, at least one single piece shelf 54 connected to the post arrangement, each of the at least one single piece shelves having an integral post securing section including a hub 48, a first post 18, a second post 29, elongated recess 31, the first post having an aperture (not numbered, but seen in figure 3) and a mating element 33. Frankel is silent concerning, *inter alia*, post pin receiving apertures.

However, Funk discloses a shelf assembly mechanism comprising a post 1 having pin receiving apertures 5, a post securing section including a hub 2 and a pin receiving indent (not numbered, but comprising the holes within the hub) within the hub, and a pin 6 extending through the post pin receiving apertures and cooperatively received by the post securing section indents to secure at least one shelf to the post means.

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It would have been obvious to one of ordinary skill in the art to provide Frankel with an attachment mechanism, taught by Funk, to more easily and securely attach the shelves to the posts.

***Allowable Subject Matter***

Claims 8, 9 and 13 would be allowable if:

- 1) rewritten to clearly set forth the inventive concept of the post encircling sleeve being disposed within the hub wherein the post encircling sleeve includes at least one pin receiving indent portion to cooperatively receive the pin within the at least one indent portion, wherein the pin is received in the at least one indent portion, receiving indent and a respective pair of the post arrangement pin receiving apertures to secure the shelf to the post arrangement. See claims 8 and 9, lines 1-6 and claim 13, lines 1-5.
- 2) rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action, and .
- 3) include all of the limitations of the base claim and any intervening claims.

Claims 11 and 12 would be allowable if:

- 1) rewritten to clearly set forth the inventive concept of the hub of the shelf having a post receiving opening and the pin receiving indent is a generally rectangularly shaped recess communicating with the post receiving opening. See lines 1-4 of claim 11 and lines

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- 2) rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action, and
- 3) include all of the limitations of the base claim and any intervening claims.

### ***Response to Arguments***

Applicant's arguments filed October 15, 2002 have been fully considered but they are not persuasive. The applicant's comments concerning Frankel are not persuasive because they are not supported by the claim language. The claims do not require that the shelf be made from one mold. Thus, a shelf that is made from different components and then attached together comprises a one piece shelf. This is exactly what Frankel discloses. Moreover, the applicant has used the open ended language "comprising" in all of the claims, therefore, additional elements, i.e., the support means 60 of Frankel, does not prevent Frankel from being a proper reference and a bar to patentability of the applicant's claims. Finally, the applicant's comments concerning Funk are not persuasive because they are not supported by the claim language. No where in the claims does the applicant set forth that the pin cannot include a nut or securing clip.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. The applicant has amended the claims to include the new limitation of a vertical post arrangement. See line 2 of claim 4. Accordingly, **THIS ACTION IS**



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**MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 703-305-3979. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on 703-308-2686. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3597 for regular communications and 703-305-3597 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-2168.

A handwritten signature in black ink, appearing to read "Gregory J. Strimbu". The signature is fluid and cursive, with a long horizontal stroke extending from the end.

Gregory J. Strimbu  
Primary Examiner  
Art Unit 3634  
January 6, 2003